

Northern Idaho Memorandum of Agreement

between

The State of Idaho and Bonneville Power Administration

for

Wildlife Habitat Stewardship and Restoration

February 2018

DRAFT

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This Agreement is made between the STATE OF IDAHO (“**Idaho**”), by and through its DEPARTMENT OF FISH AND GAME (“**IDFG**”), and BONNEVILLE POWER ADMINISTRATION (“**Bonneville**”). Together Idaho and Bonneville are the parties to this Memorandum of Agreement (“**Agreement**”).

I. Introduction

A. Purpose of the Agreement

The parties enter this Agreement to address Federal mitigation obligations for wildlife and wildlife habitat in northern Idaho, while also providing ecosystem benefits for resident fish. In particular, this Agreement permanently resolves any and all rights, claims, or interests Idaho has in wildlife-related mitigation for construction and inundation impacts under the Pacific Northwest Electric Power Planning and Conservation Act (“**Northwest Power Act**”) and other applicable laws related to the Albeni Falls Dam. It also resolves any and all rights, claims, or interests Idaho has in wildlife related mitigation for operational impacts related to Albeni Falls Dam for a period of at least 30 years. The U.S. Army Corps of Engineers owns and operates this dam for multiple public purposes, including, commercial power generation, flood control, navigation, recreation, and fish and wildlife conservation.

B. Idaho’s Interests

This Agreement applies to all Idaho State agencies, boards, or commissions. IDFG will be the lead representative for Idaho. To the extent of the authority granted to it under Idaho Code § 36-104(9), IDFG represents Idaho, including all other interested Idaho state agencies, boards, or commissions, in this Agreement. Pursuant to Idaho Code § 36-103(a), Idaho’s wildlife policy is to preserve, protect, perpetuate, and manage all wildlife within Idaho. Idaho assists Bonneville in fulfilling Bonneville’s fish and wildlife mitigation responsibilities related to the Albeni Falls Dam.

C. Bonneville's Interests

Bonneville is a power-marketing agency within the U. S. Department of Energy. Bonneville has fish and wildlife mitigation responsibilities under the Northwest Power Act, 16 U.S.C. § 839b(h)(10)(A), and other environmental laws. This includes mitigation for fish and wildlife impacts associated with the Albeni Falls Dam.

Using its Northwest Power Act authorities, Bonneville has implemented various fish and wildlife mitigation projects, including habitat acquisition, restoration, and improvement, to address the effects of the Albeni Falls Dam. Where possible, Bonneville prioritizes and funds mitigation projects that have both wildlife and fish benefits, reflecting an ecosystem approach to mitigation.

D. Northern Idaho Mitigation History

The parties entered a programmatic wildlife mitigation agreement in June 1997 (“**1997 MOA**”) to address the effects of the Albeni Falls Dam on wildlife and wildlife habitat in Northern Idaho. That agreement established the roles, responsibilities, and commitments of each party to implement wildlife mitigation projects. **Attachment 1** to this Agreement shows the real property acquired by Idaho with Bonneville funding under the 1997 MOA. Additionally, in a 2012 letter agreement (**Attachment 2**), the parties agreed to negotiate a long-term settlement for mitigation of construction, inundation, and any operational impacts on fish and wildlife resources attributed to the Albeni Falls Project. Upon execution of this Agreement, ongoing activities for all of the properties Idaho acquired under the 1997 MOA, all of the restoration work completed under the 2012 letter agreement, and all activities for future operational mitigation under this Agreement, will be covered by a single Bonneville project implemented by Idaho called the “**Northern Idaho Wildlife Mitigation Project**.”

E. Approaching Operational Effects

This Agreement addresses the upriver effects of Albeni Falls Dam operations, *i.e.* effects at Lake Pend Oreille. To mitigate for operational impacts, the parties prioritize in-place,

in-kind restoration work—that is, taking restorative actions where the operational effects occur in an effort to recreate the kind of habitat and habitat function that has been adversely affected. Under the 2012 letter agreement, Bonneville has funded and IDFG has implemented such in-place, in-kind mitigation through restoration projects around Lake Pend Oreille, specifically at the Clark Fork Delta. Therefore, IDFG is ideally situated to build on these earlier restoration efforts and address operational impact mitigation behind Albeni Falls Dam, as provided for in this Agreement.

F. Coordination with Tribes

The parties have discussed this Agreement with the Coeur D’Alene Tribe, the Kalispel Tribe of Indians, and the Kootenai Tribe of Idaho (collectively, “**the Tribes**”). Bonneville addresses mitigation with the Tribes through separate agreements, on a government-to-government basis, to mitigate fish and wildlife habitat in Idaho. This Agreement does not establish any binding legal precedent affecting the Tribes.

G. Definitions

- **Construction and inundation impacts (“C&I”)** means the effects to wildlife and wildlife habitat from the construction of a dam and the subsequent inundation from its reservoir.
- **C&I properties** means property interests, acquired by Idaho under the 1997 MOA and credited to C&I mitigation.
- **Mitigation** and **mitigate** are used to encompass the obligation to “protect, mitigate, and enhance” fish and wildlife and related habitat affected by the development and operation of any federal hydroelectric project on the Columbia River and its tributaries, including Albeni Falls Dam.¹

¹ See generally, 16 U.S.C. §§ 839b (h)(1), (2), (5), and (10) (describing the Northwest Power Act objectives and agency obligations).

- **Operational impacts** are those adverse impacts to fish and wildlife and related habitat that may be associated with the operation of dams and reservoirs.
- **Project** means Northern Idaho Wildlife Mitigation Project (#1992-061-03).
- **Project mitigation** means, collectively, all C&I properties, all restoration projects, and any property interests that Idaho acquires with funding under this Agreement.
- **Restoration** means active on-the-ground habitat improvement that is typically done on a larger scale than stewardship, often including earthmoving activities or construction, and occurs only once or at most infrequently. Restoration is not a legal mandate or objective, but it is a technique or means to help fulfill Bonneville's mandate to protect, mitigate, and enhance fish and wildlife habitat.
- **Restoration project** means restoration implemented by IDFG and funded by Bonneville under annual contracts as mitigation for operational impacts, regardless of the owner of the land on which the restoration work occurs. Restoration projects include restoration already implemented under the 2012 letter agreement and restoration implemented under this Agreement.
- **Stewardship** means land management, operation, and maintenance, along with project management and oversight, with representative stewardship activities enumerated in Section II.F.4.j.
- **Wildlife** means terrestrial and aquatic wildlife excluding fish.

II. Commitments for Mitigation

A. Agreement

This Agreement permanently resolves any and all rights, claims, or interests Idaho has in wildlife-related habitat mitigation and mitigation funding related to construction and inundation impacts from the Albeni Falls Dam within the state of Idaho, pursuant to the Northwest Power Act and any other applicable Federal law. Additionally, this

Agreement resolves any and all rights, claims, or interests that Idaho has in wildlife-related habitat mitigation and mitigation funding related to operational impacts from Albeni Falls Dam within the state of Idaho. However, after 30 years the parties will reopen the portions of this Agreement that address operational impacts, in accordance with Section IV.E. The parties will implement their funding and restoration commitments under this Agreement over a 10-year period beginning on the Effective Date.

B. Defining Federal Wildlife Mitigation Obligations

To avoid longstanding debates involving use of the Habitat Evaluation Procedure and Habitat Units, the parties agree to use acreage to define Federal wildlife mitigation associated with the Albeni Falls Dam.²

C. Impacts and Amounts of Mitigation

1. C&I Impacts

The construction of the Albeni Falls Dam and the inundation from its reservoir affected approximately 6,690 acres. To date Bonneville has funded habitat acquisition and mitigation of 14,087 acres in northern Idaho, including approximately 4,224.82 acres of Idaho's Bonneville-funded C&I properties (**Attachment 1**).

2. Operational Impacts

Idaho has identified an estimated 2,002 acres of operational impacts from Albeni Falls Dam, within the state of Idaho, based on average observed rates of habitat acreage impacted annually. The parties agree that the 2,002 acre estimate represents the entire interest that Idaho has in fish and wildlife mitigation for the operational impacts of

² The difficulties related to the use of the habitat evaluation procedure and its habitat unit metric have been extensively documented. See Pacific States Marine Fisheries Commission, *Regional Habitat Evaluation Team Final Assessment and Analysis of the NW Power Act [Wildlife Mitigation] Funded by Bonneville* (April 28, 2015) on file at Bonneville and available at <https://www.streamnet.org/hep/historical-perspective-papers/>.

Albeni Falls Dam. This estimate reflects the parties' in-place, in-kind approach to mitigating operational impacts and the footprint of priority restoration projects that Idaho identified at the Clark Fork and Priest River deltas, considering observable shoreline habitat impacts at those locations. To date, IDFG has mitigated 624 acres of operational impacts with Bonneville funding as committed in the June 1, 2012 letter agreement (**Attachment 2**).

3. Remaining Federal Mitigation Responsibility

The parties find there is no remaining Federal mitigation responsibility for C&I impacts from Albeni Falls Dam, as described in Section II.C.1. The C&I mitigation that Bonneville has funded IDFG to implement, as shown in **Attachment 1**, permanently resolves any and all rights, claims, or interests Idaho has in wildlife-related habitat mitigation and mitigation funding related to C&I for Albeni Falls Dam under the Northwest Power Act and any other applicable Federal law.

The parties find that the remaining Federal mitigation responsibility is now for operational impacts from Albeni Falls Dam, as described in Section II.C.2, which totals the restoration of an additional 1,378 acres. Under this Agreement, Idaho now assumes the responsibility to mitigate the remaining 1,378 acres using funding provided by Bonneville pursuant to section II.F.2, below.

Table 1: Total acres impacted, acquired, and remaining to mitigate.

CONSTRUCTION AND INUNDATION (in acres)	
Total C&I losses	6,690
All acquisitions Bonneville Funded to address C&I mitigation	14,087
• Acquisitions Bonneville funded	4,224.82

Idaho to acquire for C&I mitigation	
Total C&I acres remaining	0

OPERATIONAL (in acres)	
Estimated operational losses within the state of Idaho	2,002
Acres restored to address Idaho's operational losses	624
Total operational acres remaining	1,378

4. *Mitigation Crediting*

Bonneville may take other credit for mitigation benefits achieved under this Agreement for any fish, aquatic, or other mitigation obligation under the Northwest Power Act or other laws—whether those benefits are objectively quantified or negotiated by agreement—provided Bonneville does so in consultation with Idaho and seeks Idaho's concurrence. Should Idaho not concur, the parties may proceed with either the Dispute Resolution provisions of this Agreement or mechanisms provided by the legal framework under which Bonneville is seeking other credit.

D. Principles Guiding Restoration Projects

The parties will work collaboratively to restore 1,378 acres to mitigate the habitat impacts from operation of Albeni Falls Dam. Bonneville will fund and Idaho will implement mitigation of operational impacts according to the following principles and priorities.

1. In-Place, In-Kind Restoration

The parties agree that restoration will be the primary tool for operational mitigation under this Agreement, and that such mitigation will address operational impacts in-place and in-kind, *i.e.*, in locations where operational impacts actually occur and in a manner that abates their true effects.

2. Priority Restoration Projects

The parties agree that the Clark Fork and Priest River deltas are priority mitigation areas for operational impacts and together, when implemented, fulfill the intent of this Agreement to provide at least an additional 1,378 acres of restoration mitigation for operational impacts. As such, Idaho will concentrate restoration efforts on mitigating impacts at the deltas through the priority restoration projects identified in **Attachment 3**.

3. Replacement Restoration Projects

If Idaho is unable to implement priority restoration projects at the Clark Fork and Priest River deltas, in whole or in part, the parties will identify suitable replacement restoration projects to achieve in-place, in-kind mitigation of operational impacts. Replacement restoration projects will be comparable in size and expected habitat benefit to any portions of priority restoration projects that Idaho is unable to implement, and may include replacement projects identified in **Attachment 3**. The parties will take an ecosystem approach, as described in Section II.E below, when selecting, designing, implementing, and managing appropriate replacement restoration projects.

4. Restoration Footprint

Idaho will restore at least 1,378 acres in the Clark Fork and Priest River deltas by implementing priority projects identified in **Attachment 3**, or appropriate replacement

restoration projects agreed upon by the parties, to mitigate for the remaining operational impacts responsibility identified in Section II.C.3.

5. Land Acquisition

This Agreement prioritizes restoration as the best means to mitigate operational impacts of Albeni Falls Dam. The parties will make every effort to achieve the operational impact mitigation through habitat restoration projects. Nevertheless, land acquisition and protection may also be appropriate in limited circumstances, such as when acquisition of a real property interest (whether fee or easement) is necessary to accomplish a restoration project. Land acquisition may also be appropriate if Idaho is unable to implement any of the restoration projects, or replacements agreed to by the parties and listed in **Attachment 3**, or identify other suitable replacement projects, in which case acquisition and protection of quality riparian habitat within the Pend Oreille basin may be a substitute for in-place, in-kind restoration mitigation. Until Bonneville has expended all the funds provided for in Section II.F of this Agreement, Idaho may use Bonneville funding under this Agreement to acquire real property interests only with the prior written agreement of Bonneville. For any real property interests that Idaho acquires using Bonneville funding from this Agreement prior to Bonneville's full expenditure of the funds provided for in Section II.F, Idaho will follow the acquisition due diligence and procedures detailed in the Southern Idaho Wildlife Mitigation Memorandum of Agreement (2014) between the parties.³ However, after Bonneville has expended all the funds provided for in Section II.F, Idaho may use Bonneville funding under this Agreement to acquire real property interests pursuant to Sections II.C.4.h and III.B.1.

6. Regional Interests

³ On file with IDFG and Bonneville.

Idaho and Bonneville will coordinate efforts under this Agreement with the Tribes to the extent practical to address Federal, state, and tribal interests appropriately.

E. Ecosystem Benefits

Idaho and Bonneville acknowledge and agree that the restoration projects selected (**Attachment 3**) represent an ecosystem approach to mitigation of operational impacts. By protecting and restoring ecosystem structures and functional links between ecosystem elements, including reconnected floodplain habitat, the parties expect restoration implemented under this Agreement to enable significant benefits to fish, wildlife, the public and other resources of interest, both at the restoration projects themselves and beyond their work site footprints.

F. Bonneville Funding of the Northern Idaho Wildlife Mitigation Project

Beginning in FY⁴ 2018 and extending through FY 2027, Bonneville will make payments totaling \$23,895,590 (and adjusted for inflation as provided in Section II.F.9) for approved projects and their stewardship in the amounts identified below and summarized in Attachment 4.

Table 2: Total Agreement Funding

C&I Stewardship	\$6,759,712
Operational Mitigation (Restoration)	\$12,991,878
Restoration Stewardship	\$1,144,000
Administrative	\$3,000,000
Total	\$23,895,590

⁴ References in this Agreement to “FY” are to the Federal fiscal year (October 1 through September 30).

Except as provided otherwise in Sections II.F.7, III.C.4, and IV.E, Idaho will not request or support the requests of others for any additional funding from Bonneville for C&I or operational mitigation, stewardship, or restoration activities for any Project Mitigation within the terms outlined in this Agreement.

1. C&I Stewardship Funding for 1997 MOA Properties

Bonneville will provide Idaho funds to address stewardship of all C&I properties acquired under the 1997 MOA (**Attachment 1**) as mitigation for C&I impacts. Upon signature, Bonneville will transfer a total of \$6,759,712 ("**C&I stewardship**") to Idaho's designated Stewardship Account as established in Section II.F.4.

2. Mitigation Funding for Operational Impacts

The parties determined that \$12,991,878 ("**mitigation funding**") will be dedicated to the restoration of priority wildlife habitats identified as Clark Fork Delta Phase I and II and Priest River Delta, or at suitable replacement locations, consistent with principles of Section II.D, above. Bonneville will provide mitigation funding through annual contracts typical to Bonneville's Fish and Wildlife Program issued and managed using Bonneville Purchasing Instructions.⁵ Subject to the funding commitments and limitations of this Agreement, the annual contracts will incorporate the work elements in PISCES pertaining to environmental compliance, stewardship, restoration, administration, or others necessary for implementing restoration mitigation. **Attachment 7** identifies representative PISCES work elements that are appropriate for annual contracts, along with other elements as Bonneville may authorize.⁶ If Idaho reasonably objects to any provision in an annual contract and informal negotiations with Bonneville's Contracting Officer do not resolve the matter, Idaho may make its objection in writing to Bonneville's Head Contracting Authority and Bonneville shall provide a timely written response.

⁵ <http://www.bpa.gov/Doing%20Business/purchase/Pages/default.aspx>

⁶ See also the Work Elements Document linked at <http://efw.bpa.gov/contractors/statementsofwork.aspx>

3. Stewardship Funding for Restoration Projects Mitigating Operational Impacts

Over the 10-year period for implementing restoration projects under this Agreement, Bonneville will provide Idaho a total of \$1,144,000 to address stewardship of the restoration projects (“**restoration stewardship**”). Upon signature, Bonneville will provide \$360,000 out of the total restoration stewardship (\$1,144,000) for stewardship of the 624 acres that have already been restored under the 2012 letter agreement. Bonneville will disburse the remaining balance of restoration stewardship funding (\$784,000) in proportional increments as IDFG’s construction contracts for new restoration projects close, based on the proportion of mitigation funding used for each project, until the remaining \$784,000 has been disbursed. For example, if a restoration project uses 20% of the total \$12,991,878 in mitigation funding, then 20% of the remaining \$784,000 in restoration stewardship funding would be payable at close of the construction contract. Bonneville will transfer restoration stewardship funds to Idaho’s designated Stewardship Account as established in Section II.F.4.

4. Stewardship Account

- a. For the C&I properties identified in **Attachment 1** and the restoration projects identified in **Attachment 3**, Bonneville has agreed to provide Idaho the funds necessary to pay for mitigation work and stewardship. Idaho will create a **Stewardship Account** for all stewardship funding—C&I stewardship and restoration stewardship—received under Section II.F.1 and II.F.3 of this Agreement. Idaho will assume all future responsibility to provide stewardship of the C&I properties and the restoration projects completed under this Agreement. The Stewardship Account will become the property of Idaho and be managed and controlled by Idaho for the permanent protection of C&I properties and restoration projects. The Stewardship Account will be a public endowment fund not subject to Idaho Code § 67-1210.
- b. If funds in the Stewardship Account are inadequate to fulfill its purposes, Bonneville has no obligation to provide additional funding, except as may

relate to addressing operational impacts and mitigation when the parties reopen the operational impacts portions of this Agreement after 30 years as provided in Section IV.E.

- c. Idaho will invest the Stewardship Account and its earnings in a manner to provide stable and regular distribution of earnings to Idaho, while still preserving and increasing over time the value of the Stewardship Account at a rate equal to or in excess of the rate of inflation. Idaho will invest and manage the Stewardship Account in accordance with the Idaho Uniform Prudent Investor Act, Idaho Code Title 68 Chapter 5, and Idaho is authorized to invest the assets of the Stewardship Account and its earnings in any investment authorized by the Act. IDFG's Director will have fiduciary responsibility for the Stewardship Account.
- d. The funds in the Stewardship Account may be used, without additional consultation with Bonneville, to pay reasonable expenses for governance of the Stewardship Account, including fiduciary consulting, and investment management of the Stewardship Account on behalf of Idaho.
- e. The Stewardship Account will be accepted by the State of Idaho Endowment Fund Investment Board ("**EFIB**"), at EFIB's discretion and subject to the consent of the Idaho Board of Land Commissioners, as authorized by, and consistent with, Idaho Code § 57-720. If EFIB does not accept the Stewardship Account for investment, the Stewardship Account will be deposited in a combination of the Fish and Game Expendable Trust Account and the Fish and Game Nonexpendable Trust Account, as established pursuant to Idaho Code §§36-108 and 36-109.
- f. Idaho shall account for the Stewardship Account separately from other funds. Idaho, through EFIB or the Treasurer as appropriate, may deduct the expenses for investment of such funds from investment proceeds, and may combine or pool funds for investment purposes. EFIB will allocate earnings, formulate investment policies, and audit funds as set forth in

Idaho Code § 57-720. The Treasurer will allocate earnings, formulate investment policies and audit funds in accordance with state law.

- g. IDFG's Director will have sole discretion to determine the amount of the earnings to distribute from the Stewardship Account to the Fish and Game Account for expenditure, the amount of earnings to retain as earnings for subsequent distribution, and the amount of earnings to be designated as a deposit to the Stewardship Account, which deposit will constitute an addition to principal and not earnings. Earnings for the Stewardship Account will be annually calculated upon direction established by IDFG's Director to the EFIB or Treasurer, as appropriate.
- h. Idaho shall create and manage separate accounts or funds within the Stewardship Account for the C&I properties ("**C&I Stewardship Fund**") and the restoration projects ("**Restoration Stewardship Fund**"). At Idaho's discretion, distributions from the C&I Stewardship Fund may be expended for stewardship activities on any C&I property and distributions from the Restoration Stewardship Fund may be expended for stewardship activities on any restoration project. Idaho may create and manage separate accounts within the two funds so long as the C&I Stewardship Fund is used for C&I properties only and the Restoration Stewardship Fund is used for restoration projects only, except as allowed in the following subsections, II.F.4.h.i-iv.
 - i. After FY 2027, Idaho may use funds in the C&I Stewardship Fund for restoration and acquisition, in addition to stewardship activities on C&I properties, for northern Idaho wildlife mitigation without consulting with Bonneville, subject to Section III.B.1, below.
 - ii. If after 30 years the parties agree that the amount in either fund within the Stewardship Account exceeds the amount needed to fulfill its purposes, then Idaho may spend such agreed-upon excess as a cost share contribution on other restoration projects within the

Pend Oreille basin, including those identified in **Attachment 3**. Any restoration above the required 1,378 acres done in this manner shall count against any future federal obligation to further mitigate Albeni Falls Dam operational impacts.

- iii. If after 30 years the parties do not provide for funding or implementation of additional operational impact mitigation pursuant to Section IV.E, then Idaho may make distributions from the Restoration Stewardship Fund for acquisition of new properties or stewardship on C&I properties, in addition to stewardship activities on restoration projects, at Idaho's discretion and subject to Section III.B.1, below.
- iv. If after 30 years the parties provide for funding or implementation of additional operational impact mitigation pursuant to Section IV.E, then Idaho may use the Restoration Stewardship Fund only on stewardship of restoration projects until the parties agree otherwise.
 - i. Bonneville is funding Idaho to provide stewardship on the C&I properties—as described below in Section II.F.4.j—in a manner that preserves or enhances a property or group of properties' conservation values. Idaho will use Bonneville funding for stewardship activities on C&I properties that help fulfill the terms of this Agreement, meet legal obligations associated with land ownership not otherwise prohibited by this Agreement, and follow any land management plan for a property or group of properties whose acquisition Bonneville approved.
 - i. In the event that Idaho acquires additional properties using mitigation funding provided in Section II.F.2, Idaho may use the C&I Stewardship Fund for stewardship associated with land ownership on such properties, as described below in Section II.F.4.j.

j. Representative stewardship activities for both C&I properties and restoration projects include, but are not limited to, the following:

- Maintain and defend boundaries and other legal property interests;
- Monitor and address surrounding land uses or activities that could adversely affect conservation values;
- Maintain IDFG's realty files, including photos, maps, tax and ownership information;
- Update site management plans;
- Maintain roads, bridges, trails, gates, fences, locks, and signage;
- Control, prevent, and manage public access or use;
- Prevent encroachment and mitigate risk of catastrophic wildfire;
- Inventory, map, monitor, and evaluate wildlife and wildlife habitat conditions;
- Provide outreach to neighbors, stakeholders, local governments, and volunteers;
- Detect, map, and treat invasive species;
- Plan, conduct, and monitor habitat and wildlife management effects;
- Manage vegetation through mowing and other activities;
- Prepare Stewardship Account and Project Mitigation monitoring reports.

k. Limitations on the Use of the Stewardship Account.

- i. Through FY 2027, Idaho may use funds in the Stewardship Account for restoration and acquisition activities only after consulting with Bonneville and meeting all environmental compliance conditions and due diligence that Bonneville identifies associated with acquiring real property interests and restoring habitats within the Pend Oreille basin.
- ii. Idaho shall not pay property taxes or make payments in lieu of taxes with any funds provided by Bonneville. Idaho may make such payments from income generated from C&I properties as described in Section II.F.11.

- iii. Idaho will not make any use or expenditure of these monies for any purpose other than those identified in Section II.F.4. To do so would violate this Agreement and provide Bonneville the right to cease making any further payments under this Agreement and to demand custody and control of the Stewardship Account until Idaho reinstates all funds used in violation of this Agreement.
- l. Idaho's stewardship actions under this Agreement are not considered an ongoing Federal action. Except as provided in Section II.F.4.k.i above, Idaho is not required to get any environmental compliance approvals from Bonneville for activities carried out with funds from the Stewardship Account, other than approvals that may be otherwise required under an easement or land management plan. Federal regulations shall not, by reason of Bonneville's stewardship funding, apply to contracts issued by Idaho for any work on the C&I properties.
- m. Based on the most recent review of Idaho's northern Idaho wildlife mitigation projects,⁷ the parties agree the funding and commitments provided in this Agreement will enable Idaho to restore, acquire, and manage habitat in a manner consistent with the Council's 2014 Program objectives. The parties also agree that the funding and commitments provided in this Agreement are adequate to provide a reasonable amount of stewardship in perpetuity for all C&I properties and restoration projects.
- n. To the extent allowed by Idaho law, Idaho may also deposit to the Stewardship Account, any funds donated, bequeathed, devised, or conditionally granted to Idaho, by individuals or entities other than Bonneville, for the purpose of stewardship of Project Mitigation, for

⁷ See Memorandum from Steve Schroder, Chair, Independent Scientific Review Panel to Henry Lorenzen, Chair, Northwest Power and Conservation Council (Aug. 31, 2017) available at <https://www.nwcouncil.org/fw/isrp/isrp2017-9/>.

investment and management according to the terms of any such donations, bequeathals, devises, or grants. Idaho will separately account for any such funds. In calculating earnings of the Stewardship Account under Section II.F.3, Idaho will deduct any gifts, grants, transfers, deposits or devises to the Stewardship Account during the fiscal year for which the calculation is made.

5. Administrative Funding

By the end of FY 2027, Bonneville will pay to Idaho \$3,000,000 (as shown in **Attachment 4** and with inflation adjustments as provided in Section II.F.9) for administrative expenses (“**administrative funding**”). Bonneville will provide administrative funding through annual contracts typical to Bonneville’s Fish and Wildlife Program issued and managed using Bonneville Purchasing Instructions,⁸ in accordance with the mitigation funding processes described in Section II.F.2, above.

- a. Should Idaho not expend all administrative funding monies during any one year, upon contract closeout for that year, Bonneville will either reschedule the funds for use in a future year (see Section II.F.8 below), or, at Idaho’s request, deposit the funds into the Stewardship Account.
- b. Idaho may deposit up to \$250,000 of administrative funding for FY 2018 into the C&I Fund within the Stewardship Account.

6. Idaho’s Use of Administrative Funding.

The parties agree that Idaho will use administrative funding to fund Project implementation, including but not limited to the following:

- a. personnel, services and supplies, equipment, professional services, contracts, and any other expense that Idaho determines is necessary to technically support and administer a robust wildlife habitat mitigation program;
- b. implementation of restoration and habitat management to mitigate operational impacts of Albeni Falls Dam;

⁸ <http://www.bpa.gov/Doing%20Business/purchase/Pages/default.aspx>

- c. intergovernmental coordination, including Federal, state, tribal, and local entities; monitoring, evaluation, and maintaining restoration of wildlife habitat on C&I properties and, in Idaho's sole discretion, on properties that others acquire under this Agreement;
- d. management of the Stewardship Account and all projects and programs associated with that Account;
- e. preparation of reports, management plans, and performance of other administrative responsibilities under this Agreement; and
- f. environmental compliance.

7. Potential Additional Administrative Funding

Bonneville will consider providing continued funds for administration from FYs 2028-2047 to help Idaho ensure its effective administration of the Northern Idaho Wildlife Mitigation Project. The parties will make reasonable efforts to negotiate this subsequent funding plan before the expiration of this Agreement, starting by considering the base of \$300,000 annually (plus inflation as provided in Section II.F.9, minus pre-acquisition, initial site stabilization, restoration, and other expenses that will no longer be incurred), and taking into account Idaho's future needs to administer the Project and Bonneville's need to provide additional funds.

8. Pre-scheduling and Rescheduling.

Both parties will make a good faith effort to fully allocate and expend the funds as outlined in Section II.F and **Attachment 4** of this Agreement. To do so, annual project budgets may fluctuate plus or minus 20 percent in relation to the budget commitments in this Agreement, to allow for shifts between years, *i.e.*, "**rescheduling**", or to an earlier time, *i.e.*, "**prescheduling**." Fluctuations within an overall project's scope of work, but outside of the 20 percent band, can also occur if mutually agreeable for reasons such as, but not limited to, floods, fires, or other emergency or *force majeure* events.

- a. Bonneville's financial commitments are described in fiscal year terms, but Bonneville Fish and Wildlife Program contracts are not necessarily aligned to

the fiscal year. As a result, the expense budgets in **Attachment 4** will be interpreted as project-year budgets. This means that a project (as implemented through a Bonneville-issued contract or contracts) can start anytime during the Federal fiscal year (October 1 through September 30) and use that project year budget for the full contract implementation period (usually one year).

- b. Bonneville will allow prescheduling future budgets and rescheduling unspent budgets if the adjustment complies with the amounts shown in **Attachment 4**.
- c. The budget cap in each fiscal year is 120% of the original inflation-adjusted budget as shown in **Attachment 4**. This cap governs Idaho's requests for prescheduling and rescheduling adjustments. The parties may agree to adjust the 120% cap to better fulfill the purposes of this Agreement. To exceed a 120% cap, Idaho will notify Bonneville at least six months in advance of the potential need for such an adjustment. Bonneville may decline to make the adjustment to avoid a "bow wave" of spending in any given year and on other reasonable grounds.

9. Inflation Adjustment

Beginning in FY 2020 of the Agreement, Bonneville will increase annual administrative funding and remaining and unobligated mitigation funding by 2.5% each year through FY 2022 of the Agreement. Bonneville will renegotiate with Idaho the inflation rate for FY 2023 to FY 2027 of the Agreement based on future economic conditions or the parties will continue to apply the 2.5% inflation rate for FY 2023 to FY 2027 if the parties do not reach agreement on an adjusted rate.

10. Full Expenditure of Funds.

The parties intend to expend all funds provided in this Agreement, except those held in trust in the Stewardship Account, by the end of FY 2027. If at the end of FY 2027 those

monies, except those held in trust in the Stewardship Account, remain unexpended, the parties will agree to either

- (i) extend the time for their expenditure through FY 2047, or
- (ii) provided Idaho has restored at least 1,378 acres, deposit the unexpended balance into the Restoration Stewardship Fund in the Stewardship Account. Idaho may, however, use the unexpended balance deposited into the Restoration Stewardship Fund for additional restoration work and restoration stewardship, consistent with the principles of Section II.D, only after the parties determine whether to provide for funding or implementation of additional operational mitigation at the time of the reopener, as provided in Section IV.E.

The parties will structure Bonneville's payment of the balance of any unexpended funds to be completed expeditiously and in a manner that fits Bonneville's available budgets while accommodating Idaho's interests.

11. Net Proceeds from C&I Properties

Idaho will deposit the net proceeds from any income generated from C&I properties through property-specific fees (e.g., timber receipts, grazing lease fees, recreational or hunting fees, movie rights or royalties, sale of fixtures, etc.) into either the Fish and Game Account or the Stewardship Account. "**Net Proceeds**" refers to proceeds remaining after necessary expenses related to the income-generating activity. Idaho will account for Net Proceeds separately from other funds. Idaho may pay property taxes, payments in lieu of taxes, and other expenses and assessments using income generated from C&I properties. Idaho may use income generated from one C&I property to address expenses arising on other Project Mitigation (C&I properties or restoration projects). Idaho will only spend Net Proceeds for the benefit of Project Mitigation for purposes allowed under this Agreement.

G. Relation to Acres

Idaho will pursue cost-sharing and other efficiencies so that the funds provided under this Agreement could result in restoration of more than 1,378 acres. As a result, Bonneville will provide all the funding for restoration projects as described above through FY 2027, even if the 1,378 acre restoration requirement is met earlier.

III. Additional Commitments

A. Secure Funding

Bonneville will take reasonable steps to ensure that the commitments in this Agreement are not modified or reduced based on agency-wide streamlining or other cost-cutting efforts, and include the estimated cost of implementing this Agreement in the agency's revenue requirement to be recovered through base wholesale power rates.

B. Permanent Protection

1. Through FY 2027, if Idaho uses any funding provided by Bonneville under this Agreement to acquire interests in real property, whether in fee or by easement, then all such acquisitions must include provisions for permanent protection and enforcement of those protections. For fee acquisitions, Idaho will execute and record a covenant running with the land substantively equivalent to the template provided in **Attachment 5**. Where Idaho secures a conservation easement rather than fee, it will ensure that the United States, acting through Bonneville or its successor agency, obtains a third party right of enforcement substantively equivalent to the template provided in **Attachment 6**.

- a. After FY 2027, if Idaho uses any funding provided by Bonneville under this Agreement to acquire interests in real property, Idaho will hold such property in trust and will manage it in perpetuity for the public purposes of mitigation, permanent protection and enhancement of wildlife and wildlife habitat. Further, because the funds provided under this

Agreement are Federal funds, Idaho shall comply with the following requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970⁹ that govern real property acquisitions made, among others, with Federal financial assistance:¹⁰

- i. Prior to making an offer for the property, clearly advise the owner in writing that Idaho will not acquire the property if negotiations fail to result in an agreement; and
 - ii. Inform the owner in writing of what it believes to be the market value of the property.
2. Property acquired under this Agreement will be held by Idaho in trust for the public and fish and wildlife.
3. The parties acknowledge the value of public recreational and educational use of lands protected under this Agreement and that enabling these activities is part of IDFG's statutory mission and an appropriate use for acquired properties. IDFG may exercise its discretion to determine reasonable public access for such properties.

C. Adequacy and Support of Agreement

Idaho agrees that the properties listed in **Attachment 1** and the restoration implemented under the 2012 letter agreement (**Attachment 2**), combined with the funding and commitments by Bonneville in this Agreement, satisfy and resolve any and all rights, claims, or interests Idaho has in

- (1) wildlife-related mitigation and mitigation funding for construction and inundation impacts of the Albeni Falls Dam within the state of Idaho, and
- (2) wildlife-related mitigation and mitigation funding for operational impacts of the Albeni Falls Dam within the state of Idaho for a period of at least 30 years,

⁹ 42 U.S.C. § 4601 *et seq.*

¹⁰ 49 C.F.R. § 24.101(b).

whether those impacts are measured as habitat units, acres, or some other mitigation metric, and whether those impacts are considered primary, secondary, cumulative, or otherwise.

1. This Agreement binds all Idaho State agencies, boards, or commissions.
2. During the term of this Agreement, if Idaho submits recommendations or comments, or supports those of another entity, related to wildlife habitat and the Albeni Falls Dam operations in relation to the Council Program, then all such recommendations or comments will follow and be intended to effectuate this Agreement.
3. Idaho will cooperate in good faith in assisting Bonneville to respond to any allegations that Bonneville or the Federal Government has not fulfilled its Northwest Power Act or other statutory wildlife-related mitigation responsibilities for mitigation for the Albeni Falls Dam, whether in legal, administrative or general public forums, by affirming the adequacy of C&I and operational mitigation within the state of Idaho to the extent Idaho may do so without waiving Idaho's sovereign immunity or immunity under the Eleventh Amendment to the United States Constitution, and subject to constraints imposed under Idaho law.
4. Neither party may seek to increase or reduce the funding specified in this Agreement, or support others in doing so, unless the parties agree that one or more of the following exceptions apply:
 - a. There have been substantial and significant changes in applicable Federal law or in the physical attributes or operating parameters of the Albeni Falls Dam,
 - b. *force majeure* events, or
 - c. Bonneville agrees with the Tribes, whether through settlement or otherwise, to recognize an increase in the quantity of unmet Federal mitigation

responsibility (in acres, habitat units, or other mitigation metric) for C&I impacts associated with Albeni Falls Dam.

If the parties disagree over whether substantial and significant changes have occurred, neither party may seek changes in this Agreement until completing dispute resolution as provided in Section IV.C. This section, however, does not restrict either party from soliciting, receiving, or granting monies, or supporting others in doing so, in other programs not designed to directly address the Federal wildlife mitigation responsibility arising from the effects occurring, or that have occurred from, the construction, inundation, and operation of the Albeni Falls Dam.

D. 1997 MOA

This Agreement supersedes the 1997 MOA. For consistency in fulfilling Idaho's obligations under Section III.B to execute and record covenants for permanent protection of C&I properties, Bonneville will execute and record an extinguishment or amendment of its executory interests for C&I properties acquired under the 1997 MOA (**Attachment 1**) that Idaho holds in fee, and Idaho will execute and record covenants to replace or amend the executory interests on these properties. The parties will make their best efforts to fully perform their duties under this section by September 30, 2020.

For all C&I properties and for any new properties acquired under this Agreement, Idaho agrees to Bonneville's access with reasonable notice, and to Bonneville's perpetual enforcement rights for covenants and conservation easements with third-party rights of enforcement.

E. Consistency with the Council Program

This Agreement is consistent with the Council's 2014 Program¹¹ in that the Agreement does the following:

- uses acres as a measureable objective to address unfinished mitigation for the Albeni Falls Dam;
- takes an ecosystem-based approach to restoration through projects that promote terrestrial and aquatic connectivity benefiting both fish and wildlife;
- protects properties and ensures their management for wildlife mitigation in perpetuity;
- provides funding for the restoration and long-term maintenance and monitoring of the wildlife habitats;
- provides sufficient funds for restoration and stewardship to demonstrate a substantial likelihood of achieving the Agreement's wildlife mitigation objectives;
- builds on the parties' mitigation commitments in the 1997 MOA to provide full mitigation;
- overcomes the impasse related to the Habitat Evaluation Procedure used to establish the initial wildlife habitat loss assessments incorporated into the Council Program; and,
- provides habitat benefits for northern Idaho fish.

F. Idaho Property Ownership and Management

The United States and Bonneville make no warranties or representations whatsoever regarding any real property interest that Idaho acquired under the 1997 MOA or acquires under this Agreement. Idaho assumes all management and operational control of the properties, and will therefore be responsible for all incidents of ownership. Idaho will take all lawful actions, assume full responsibility, and not seek any additional contributions from any Federal agency for incidents of ownership that may arise from

¹¹ See generally Northwest Power and Conservation Council, Columbia River Basin Fish and Wildlife Program 72–75 (2014), available at <https://www.nwcouncil.org/fw/program/2014-12/program/>.

the acquisition and stewardship of any property covered by this Agreement. Such incidents of ownership include, but are not limited to, payments in lieu of taxes, taxes, levies, assessments, hazardous waste response, fire suppression, cultural or historic resource mitigation or preservation, endangered species protection, noxious weed or invasive species management, and tort liability.

G. Future Transmission Facilities

Idaho accepts that in the future Bonneville may seek to construct, locate, operate, maintain, and access future transmission facilities within one or more C&I properties. If Bonneville seeks to do so, there shall be no additional consideration owed by Bonneville to Idaho, beyond the funds provided under the 1997 MOA and this Agreement, for securing easements for these transmission purposes. Should such a transmission easement be needed by Bonneville over a C&I property, the parties will negotiate the terms and conditions of the easement, in accordance with applicable law (including appropriate mitigation measures, identified as part of the environmental analysis for the transmission right of way, to be funded by Bonneville), and taking into account the purpose of this Agreement. Transmission right-of-way easements shall be for the sole purpose of transmission of electrical power and ancillary transmission communications. Such transmission facilities are expressly not precluded by this Agreement.

H. Consolidating IDFG's Bonneville Mitigation Contracts

Upon execution of this Agreement, Bonneville and IDFG will promptly execute a new statement of work for the Northern Idaho Wildlife Mitigation Project, 1995-061-00 and 1995-061-03, to consolidate contracts numbered 73192 and 73231. The parties will update and revise the statement of work annually as appropriate to reflect the terms of this Agreement.

I. Non-Appropriation of Idaho Funds

This Agreement shall in no way be construed so as to bind or obligate Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time.

J. Public Records

Nothing in this Agreement prohibits access to information as required by state and Federal public information and open records laws.

K. Reporting

1. Beginning in FY 2018 and through FY 2027, and for as long as Idaho accepts annual funding to administer the Northern Idaho Wildlife Mitigation Project, Idaho shall prepare an annual report for Bonneville and the Council for wildlife mitigation funded through this Agreement, and use the Bonneville project tracking system, PISCES.
2. Beginning in FY 2018 and continuing through FY 2047, Idaho will provide to Bonneville an annual accounting of the use of funds from the Stewardship Account, documenting all expenditures made using the Stewardship Account. Bonneville may inspect Idaho's records for the Stewardship Account at any time upon reasonable notice, which shall be no less than five business days.
3. Idaho will offer to meet with Bonneville at least once annually to assess progress and discuss future project opportunities.
4. Idaho will send all reports required under this Agreement to F&W Project Manager, EWM-4, P.O. Box 3621, Portland, Oregon 97208-3621, unless otherwise directed by Bonneville.

IV. Administrative Provisions

A. *Good Faith Implementation*

This Agreement rests on bargained-for consideration. The parties will work together to fulfill their commitments. Matters explicitly addressed within or related to this Agreement routinely arise in a variety of contexts and forums, often on short notice and in time-sensitive situations. The parties will make reasonable efforts to implement and support this Agreement in good faith.

Because questions or concerns may arise regarding a party's compliance with this Agreement, the parties will take the following steps.

- Designate a person for each party to be initially and chiefly responsible for coordinating internal questions regarding compliance with the Agreement.
- Make reasonable efforts to consult together before making decisions implementing this Agreement, and support it at all of their respective organizational levels—*e.g.*, policy, legal, and technical.
- On a continuing basis, take steps to ensure that all levels of their organizations, and other interested or affected federal and Idaho agencies, boards, and commissions, are made aware of the existence of this Agreement and the specific commitments and obligations herein, and emphasize the importance of meeting them.
- Make best efforts to consult with the other party before taking any action that could reasonably be interpreted as inconsistent with any part of this Agreement. Other issues relating to the natural resources of Albeni Falls Dam may arise in a broader context than this Agreement that may impact the parties. The parties agree to make best efforts to identify such other issues, and consult with the other party before taking any action that could adversely affect the purposes and provisions of this Agreement. The parties will make best efforts to resolve such

other issues in a manner that preserves this Agreement and the spirit of collaboration fostered by it.

- The parties will affirmatively support and defend the terms of this Agreement and its legal adequacy in all forums where such questions may arise, such as before the Northwest Power and Conservation Council during its project reviews, policy forums, and Fish and Wildlife Program amendment processes.

B. Periodic Review and Modification

The parties agree to review this Agreement, including the attachments, and any issues concerning its implementation, in FY 2023. At any time, either party may propose an amendment of the Agreement. No amendment of the Agreement is effective unless and until it is in writing and signed by all parties.

C. Dispute Resolution

The parties will attempt to resolve disputes arising out of or relating to this Agreement by following the dispute resolution mechanism in this section and without resort to administrative, judicial or other formal dispute resolution procedures. This section provides the parties an opportunity to fully and candidly discuss and resolve disputes without the expense, risk, and delay of formal dispute resolution.

If the parties cannot resolve a dispute regarding this Agreement or management of the Project or Project Mitigation under this Agreement through informal discussions, they will submit such dispute to non-binding mediation. Either party may trigger this section by making a written request for the other party to join in mediation. Within 30 days of triggering this provision, the parties will select a mediator, or if they are unable to select a mediator, each party will select a mediator and the two selected will choose a third mediator who will be the sole mediator. The parties will use reasonable efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60

days and there have been at least two mediation sessions, either party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation, no party may initiate any legal proceeding except in aid of mediation. The parties will each cover their own costs of dispute resolution and share equally the costs of mediation.

For disputes arising under annual contracts issued by Bonneville to fulfill its obligations for mitigation funding and administrative funding, the parties interpret this Dispute Resolution section as consistent with Section 21.3.14 of the Bonneville Purchasing Instructions, which allows the contractor and contracting officer to use alternative means of dispute resolution under the Contract Disputes Act. The parties may agree to binding arbitration on a case-by-case basis.

D. Effective Date

This Agreement becomes effective from the date of the last signature.

E. Reopener and Potential Additional Operational Mitigation

Notwithstanding this Agreement's permanent resolution of Idaho's interests in wildlife-related mitigation and mitigation funding for the construction and inundation impacts of Albeni Falls Dam, 30 years after the Effective Date the parties will reopen the portions of this Agreement that address operational impacts only. For the purposes of this Agreement, "reopen" means that the parties will meet in-person to conduct a good-faith assessment of whether circumstances at that time warrant additional operational mitigation, considering at a minimum:

- changes to Albeni Falls Dam operations and resulting operational impacts, if any;
- the totality of fish and wildlife protection, mitigation, and enhancement work accomplished with Bonneville funding in the Pend Oreille basin;

- the long-term resiliency of the restoration work funded through this Agreement and the 2012 letter agreement;
- the larger regional context of the Federal Energy Regulatory Commission's relicensing of operations at Cabinet Gorge and Noxon dams; and
- other unanticipated circumstances affecting operational impacts.

At the conclusion of the reopener, the parties will expeditiously amend or restate this Agreement as needed to address funding and implementation of additional operational mitigation.

F. Applicable Law

Federal law governs this Agreement and any action, whether mediated or litigated, brought or enforced, except where the Agreement specifically cites Idaho law.

G. Authority

Each party represents and acknowledges that it has full legal authority to execute this Agreement.

H. Indian Trust and Treaty Rights

Nothing in this Agreement changes any Indian tribe's legal rights, authorities, or jurisdiction related to wildlife, fish, or wildlife or fish habitat management.

I. Severability

If any court, regardless of appeal, invalidates any part of this Agreement as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, the parties will consider that as constituting a material change and will negotiate as provided in Section IV.C, Dispute Resolution.

J. Entire Agreement

This Agreement represents the entire agreement between the parties concerning Federal wildlife-related mitigation related to the construction, inundation, and operation of the Albeni Falls Dam. All previous communications between the parties, either oral or written, with reference to the subject matter of this Agreement are superseded. Unless authorized in this Agreement, neither party may impose on the other any additional requirements concerning reporting, documentation, planning, procedure, or any other subject related to mitigation activities, funding, or legal compliance under this Agreement.

K. Precedent

This Agreement, including but not limited to its reliance on acres instead of habitat units, shall not set a precedent for how either party may approach wildlife mitigation and crediting elsewhere in Idaho.

L. Counterparts

Two copies of this Agreement have been executed, each of which has original signatures and shall be deemed an original.

SIGNATURES:

Bonneville Power Administration

Date

Governor, State of Idaho

Date

Director, Idaho Department of Fish and Game

Date

DRAFT

Attachment 1 – List of IDFG C&I Properties

Locations, dates, acres, costs and habitat units (HU) for all IDFG Albeni Falls wildlife mitigation acquisitions between July 1997 and January 2014.

NAME	LOCATION	COUNTY	YEAR	ACRES	COST
Pend Oreille WMA					
Albeni Cove	Pend Oreille River	Bonner	1999	70.97	\$126,000
			2008	27.00	\$163,500
Carter's Island	Clark Fork River Delta	Bonner	1997	97.30	\$288,000
Cocolalla Lake	Cocolalla Lake	Bonner	1999	97.47	\$290,000
			2010	20.00	\$300,000
Denton Slough	Lake Pend Oreille	Bonner	1997	17.08	\$44,000
Derr Creek	Clark Fork River Delta	Bonner	1997	239.40	\$511,000
Gold Creek	Lower Pack River	Bonner	2005	316.20	\$2,325,000
Lower Pack River	Lower Pack River	Bonner	1999	29.18	\$42,000
			2006	0.26	\$24,000
			2007	0.55	\$40,000
			2008	0.74	\$45,000
Pearl Island	Lake Pend Oreille	Bonner	2009	7.72	Donation
Rapid Lightning	Lower Pack River	Bonner	1999	109.95	\$219,000
			2006	41.00	\$461,000
			2007	210.49	\$1,920,870
			2012	26.24	\$325,000
Tall Pines	Hayden Lake	Kootenai	2011	203.00	\$1,750,000
Trout Creek	Lower Pack River	Bonner	1999	216.00	\$875,000
			2008	5.00	\$249,129
			2007	26.30	\$111,000
			2009	68.90	\$1,072,000
Westmond Lake	Westmond Lake	Bonner	1999	65.64	\$118,800
White Island	Clark Fork River Delta	Bonner	2010	131.58	\$1,224,800
Pend Oreille WMA Totals				2,027.97	\$12,525,099
Coeur d'Alene River WMA					
Lower St. Joe	St. Joe River	Benewah	2007	62.00	\$620,000
Robinson Creek	CDA River Valley	Kootenai	2009	46.00	\$110,000
Coeur d'Alene River WMA Totals				108.00	\$730,000
Boundary Creek-Smith Creek WMA					
Deep Creek	McArthur Wildlife Corridor	Boundary	2005	39.85	\$65,000
Boundary Creek	Boundary Creek	Boundary	1999	1,405.00	\$672,885
Smith Creek	Smith Creek	Boundary	2007	620.00	Donation
Sullivan	Boundary Creek	Boundary	2008	24.00	\$318,000
Boundary Creek-Smith Creek WMA Totals				2,088.85	\$1,055,885
Grand Totals				4,224.82	\$14,310,984

Attachment 2 – 2012 Letter Agreement

OFFICE OF ENERGY RESOURCES

C.L. "BUTCH" OTTER
Governor

JOHN CHATBURN
Interim Administrator



304 N. 8th Street, Suite 250, P.O. Box 83720
Boise, Idaho 83720-0199

(208) 332-1660
FAX (208) 332-1661

June 1, 2012

Ms. F. Lorraine Bodi
Vice President, Environment, Fish and Wildlife
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Dear Ms. Bodi:

Idaho reaffirms its support for the concept of using the existing hydroelectric system to generate additional energy for the region. The Columbia Basin's economy and families need the low-cost, clean, renewable power hydroelectric provides. Idaho also remains committed to protecting Lake Pend Oreille and rebuilding the lake's fishery. To date, BPA and the State have collaborated on numerous monitoring and mitigation efforts that have benefited natural resources of the Pend Oreille basin. This letter of agreement is intended to further our mutual commitment to addressing monitoring and mitigation efforts in the Lake Pend Oreille basin associated with the operation of Albeni Falls Dam consistent with BPA's legal authorities under the Northwest Power Act.

On behalf of the State of Idaho, we concur with the terms of agreement, as described in your October 28th, 2011 letter and subsequent discussions, restated as follows.

BPA makes the following commitments pertaining to the effect of the existing operations of Albeni Falls Dam:

- Through federal fiscal year 2014, BPA will provide IDFG a total of \$3,000,000 in funding (\$1,000,000 per year for 3 years) for erosion management actions. This funding would use \$1,000,000 per year for 3 years of the approximately \$1,500,000 BPA currently provides to IDFG for mitigation of wildlife impacts from the construction and inundation (C/I) of Albeni Falls Dam, but this \$3,000,000 would not "count" or be credited against wildlife mitigation. The remaining \$500k/year will remain available for continued mitigation of C/I losses, or upon mutual agreement between BPA and IDFG, applied to erosion control and habitat restoration without being credited against mitigation for C/I losses. The shape and timing of this spending will be negotiated and mutually agreed upon by BPA and IDFG.
- BPA will provide IDFG an additional \$150,000 (\$50,000 per year, for three years) to the existing monitoring efforts by IDFG. This funding will be used to hire an independent third party to examine erosion impacts and study gravel placement for spawning at lower elevation. BPA and Idaho will work together to ensure coordination with parties in the Basin, including the Kalispel Tribe.

- BPA agrees to negotiate in good faith to reach a mutually agreed upon long-term settlement for mitigation of construction, inundation, and any operational impacts on fish and wildlife resources attributed to the Albeni Falls project.

In consideration of these commitments, Idaho agrees to the following:

- Idaho will recommend and support drafting Lake Pend Oreille to elevation 2,051 in fall 2011 (already recommended); to 2,055 feet in the fall of 2012; and to elevation 2,051 in the fall of 2013. BPA and IDFG will work cooperatively on lake-level management during these three winter operation periods to implement erosion control and habitat restoration actions as outlined in BPA bullet 1, above. After 2013, Idaho's recommendation for the appropriate elevation management of Lake Pend Oreille will be determined, after mutual discussion, based on the latest information available on the needs of kokanee, the fishery, and other resources. Additional information governing appropriate lake levels may also come from the provisions of any new bull trout Biological Opinions.
- Idaho agrees that dollars spent on erosion control and restoration will be counted against mitigation for operational losses if a loss assessment determines mitigation needs exist (consistent with BPA mitigation responsibilities under the Northwest Power Act).
- Idaho supports using the existing hydroelectric system to meet regional power needs, including Flexible Winter Power Operations (FWPO). Based on discussions with you and Administrator Wright after your October 28 letter, Idaho and BPA have agreed to meet as necessary to discuss any significant new information from this monitoring or significant changed circumstances related to Albeni Falls operations. BPA will determine the appropriate next steps in coordination with Idaho and other interested entities, which could include adjustments in monitoring or mitigation.
- Through May 31, 2017, Idaho will not initiate or participate in a capacity as plaintiff or petitioner in any administrative or legal challenges to the EA, the FWPO, or current operations of Albeni Falls, and will not object to the filing of this letter of agreement in any such proceedings initiated by other entities.

Prior to expiration of this commitment, Idaho and BPA will discuss appropriate extension of this commitment.

- In addition, it is Idaho's intent, consistent with our past practice and the provisions of Idaho's various mitigation agreements and accords with BPA, to seek resolution of any disputes that may arise through good faith and candid discussion without resorting to administrative, judicial, or other formal dispute resolution procedures. Should such discussion not resolve a dispute on this issue, Idaho would propose non-binding mediation before initiating any legal or administrative proceeding.
- Idaho agrees to negotiate in good faith to reach a mutually agreed upon long-term settlement for mitigation of construction, inundation, and any operational impacts on fish and wildlife resources attributed to the Albeni Falls project.

As a separate matter, regarding issues of icing under FWPO, Idaho appreciates the fact that the Corps and BPA are implementing a new standard operating procedure (SOP) to help minimize the risk of damage to structures around Lake Pend Oreille. We understand that the SOP entails monitoring ice conditions around structures on Lake Pend Oreille and actively fluctuating the lake during the winter when power operations are not occurring, and that the purpose of the SOP is to maintain some minimum lake fluctuation sufficient to maintain the active cracks around structures (e.g., piles) and a hinge crack along the shoreline of the lake. This was an important concern for citizens of Idaho who live and recreate on the lake, and we are encouraged that the SOP may over the long term decrease the overall risk of damage to structures.

Finally, we affirm that nothing in this letter of agreement is intended to change the respective legal authorities of BPA, the state of Idaho, the Kalispel Tribe, or other sovereigns involved in the Pend Oreille Basin.

We look forward to working with BPA to carry out the mutual commitments described in this exchange of letters.

Sincerely,

John Chatburn
Interim Administrator

Attachment 3 – Restoration Projects

<i>Priority Restoration Projects</i>			
Clark Fork River Delta Restoration Phase II (Areas 5 & 6) Phase I (Areas 7 & 11)	Wetland protection, creation and enhancement	Clark Fork River entering Lake Pend Oreille	1,279 acres
Priest River Delta Restoration	Wetland protection, creation and enhancement	Priest River/Pend Oreille River Confluence	99 acres
Total			1,378 acres
<i>Potential Replacement Restoration Projects</i>			
Pack River Delta Restoration	Wetland protection, creation and enhancement	Pack River entering Lake Pend Oreille	50 acres
Morton Slough Water Control Development	Re-establishment of water control structure	Morton Slough Habitat Segment- ACOE property managed by IDFG	130 acres
Hoodoo Creek Restoration	Wetland development and bank protection	Hoodoo Creek/Pend Oreille River Confluence	40 acres
Riley Creek Restoration	Wetland development and bank protection	Riley Creek/Pend Oreille River Confluence	28 acres
Cary Creek Restoration	Wetland development and bank protection	Cary Creek/Pend Oreille River Confluence	20 acres
Hornby Creek Restoration	Wetland development and bank protection	Hornby Creek/Pend Oreille River Confluence	16 acres
Albeni Cove Repair and Expansion	Wetland structure repair and expansion of new wetland cells	Albeni Cove Habitat Segment of the POMWA	12 acres

Attachment 4 – Payout Schedule

#	Funding Category	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	TOTAL 2018-2027 (Base)
1	C&I Stewardship	\$ 6,759,712	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$6,759,712
2	Operational Mitigation	\$ 432,741	\$ 432,741	\$ 5,707,821	\$ 2,000,000	\$ 2,783,965	\$ -	\$ 1,634,610	\$ -	\$ -	\$ -	\$12,991,878
3	Operational Stewardship*	\$ 360,000	\$ -	\$ 396,669	\$ 120,691	\$ 167,999	\$ -	\$ 98,641	\$ -	\$ -	\$ -	\$1,144,000
4	Administration	\$ 525,000	\$ 275,000	\$ 275,000	\$ 275,000	\$ 275,000	\$ 275,000	\$ 275,000	\$ 275,000	\$ 275,000	\$ 275,000	\$3,000,000
YEARLY TOTALS:		\$ 8,077,453	\$ 707,741	\$ 6,379,490	\$ 2,395,691	\$ 3,226,964	\$ 275,000	\$ 2,008,251	\$ 275,000	\$ 275,000	\$ 275,000	\$23,895,590
*With the exception of FY2018, Operational Stewardship amounts are estimated based on work schedule and will be provided according to section II.F.3.												

Attachment 5 – Covenant Running with the Land

After recording, return to:
Bonneville Power Administration
Real Property Services, TERR
Attn: Bonneville Tract No.
P.O. Box 3621
Portland, OR 97208-3621

COVENANT RUNNING WITH THE LAND

Covenant. The State of Idaho, through the Idaho Fish and Game Commission and the Idaho Department of Fish and Game (hereinafter Idaho or Grantor), for and in consideration of funding (insert actual dollar and legal amount Bonneville paid for purchase,) provided to acquire fee ownership of certain real property in the County of XXX, State of Idaho, hereby grants, bargains, conveys, and warrants to the United States of America, acting by and through the Department of Energy, Bonneville Power Administration, its successors and assigns (hereinafter Bonneville or Grantee), this covenant, created under the provisions of the Idaho Conservation Easement Act, Idaho Code §§ 55-2101 to 55-2109 and implemented under applicable state and federal law, which runs with the land legally described as follows:

A tract of land located in [Legal description—alternatively, attach the legal description as an exhibit.]

Under this covenant running with the land, Idaho will use this real property for the public purposes of mitigation, permanent protection and enhancement of wildlife and wildlife habitat, [and to protect historic properties, as such are identified by Bonneville and IDFG at the time of acquisition], and to allow public access that is reasonable in light of these purposes.

Idaho acquired this real property to help Bonneville in partially fulfilling its duty to protect, mitigate, and enhance wildlife habitat affected by the development of the Federal Columbia River Power System as required by section 4(h)(10)(A) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 *et. seq.* The funds were provided under a Memorandum of Agreement (MOA) between Idaho and Bonneville, dated September 2014 and recorded in [identify County] under file No.XXXX. To fulfill its promises to Bonneville under the MOA, Idaho or its assign is recording this covenant running with the land. Provided, (1) should Idaho choose to exercise its rights to sell or exchange the property and Bonneville concurs, as evidenced by an affidavit executed by Idaho and Bonneville, or (2) a court finds the MOA is not binding on one of the parties, then this covenant will become void and be removed as an encumbrance upon this real property, or portion thereof.

ACKNOWLEDGED

By: _____
{NAME}
Secretary, Idaho Fish and Game Commission
Director, Idaho Department of Fish and Game
State of Idaho

Date: _____

Date:

ACCEPTED

By: _____
{NAME}
Manager, Real Property Services
United States of America

Date: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 20_____, before me
personally
appeared _____,
known to me or proved to me on the basis of satisfactory evidence to be the person who
executed the within instrument as the _____

acknowledged to me that ___ he executed the same freely and voluntarily in such
capacity; and on oath stated that ___ he was authorized to execute said instrument in such
official or representative capacity.

Notary Public in and for the

State of _____

(SEAL) Residing at _____

My commission expires _____

Attachment 6 – Third Party Rights to Enforce

Template Language

Third Party Right Insertion. Where Idaho secures a conservation easement, it shall ensure the grantor grants third party rights of enforcement to the United States and third party right implementation provisions as part of the granting clause as follows:

For the same consideration cited above, Grantor hereby voluntarily conveys and warrants to the United States of America and its assigns third party rights of enforcement, entry, and inspection.

Definition of Bonneville’s jurisdiction and control over third party rights should also be in the body of the conservation easement after the granting clause, where language specifically may be as follows:

Third Party Rights. Grantor has conveyed the rights of enforcement, entry, and inspection to the United States of America and its assigns in [cite section]. The Department of Energy, Bonneville Power Administration (Bonneville) is the acquiring federal agency having jurisdiction and control over the third party rights, which are more particularly described as follows:

Enforcement. Bonneville may, after providing Idaho with notice and a reasonable time to respond and engage in good faith consultation (where reasonable means no more than 14 calendar days, except in cases of emergency or unavailability of Idaho where Bonneville may reasonably act immediately to stop or mitigate a threat to conservation values), exercise all of the rights and remedies of Idaho and is entitled to all of the indemnifications provided to Idaho. If Idaho exercises the rights and remedies of the easement, then Idaho will be entitled to reimbursement from Grantor of its costs of enforcement. If Bonneville exercises the rights and remedies of the easement, then Bonneville will be entitled to reimbursement from Grantor of its costs of enforcement. If Idaho and Bonneville jointly exercise the rights and remedies of the easement, then Idaho and Bonneville will work cooperatively to apportion the costs of enforcement in accordance with the efforts of each.

Entry and Inspection. Bonneville may, in a reasonable manner and at reasonable times, enter and inspect the easement area to determine compliance with the terms of the conservation easement. Except in the case of an emergency, Bonneville will attempt to give Grantor and Idaho notice prior to such entry and inspection, which notice may be by telephone or electronic mail.

Bonneville shall sign an acceptance of the third party enforcement rights on the conservation easement document before Idaho records it.

Attachment 7 – PISCES Work Elements Available for Statements of Work (SOW) using the Administrative Fund

Work Element Number	Work Element Name	Notes
27	Remove Debris	This work element should only be used for removal of fences, buildings, infrastructure or equipment that are on the property at time of purchase. The work element cannot be used to remove debris/trash that is disposed of on the property after it is purchased. Also, the work element cannot be used to clean up hazardous waste, which should be cleaned up prior to closing.
29	Increase Instream Habitat Complexity and Stabilization	
30	Realign, Connect, and/or Create Channel	
33	Decommission Road/Relocate Road	
34	Develop Alternative Water Source	
35	Develop Pond	
36	Develop Terrestrial Habitat Features	
40	Install Fence	
47	Plant Vegetation	This work element can be used for as many years as needed to reach restoration goals.
48	Practice No-till and Conservation Tillage Systems	
55	Erosion and Sedimentation Control	
69	Install Fish Screen	
85	Remove/Breach Fish Passage Barrier	
98	Other	
99	Outreach and Education	
114	Identify and Select Projects	
115	Produce Inventory or Assessment	
119	Manage and Administer Projects	
122	Provide Technical Review	
132	Produce (Annual) Progress Report	
141	Produce Other Report	
148	Install Flow Measuring Device	
156	Develop RM&E Methods and Designs	

157	Collect/Generate/Validate Field and Lab Data	
158	Mark/Tag Animals	
160	Create/Manage/Maintain Database	
161	Disseminate Raw/Summary Data and Results	
162	Analyze/Interpret Data	
165	Produce Environmental Compliance Documentation	
172	Conduct Pre-Acquisition Activities	
174	Produce Plan	
175	Produce Design and/or Specifications	
180	Enhance Floodplain/Remove, Modify, Breach Dike	
181	Create, Restore, and/or Enhance Wetland	
183	Produce Journal Article	
184	Install Fish Passage Structure	
185	Produce Pisces Status Report	
191	Watershed Coordination	
193	Produce Land Management Plan	
199	Remove Vegetation	This work element can be used for as many years as needed to reach restoration goals.
203	Install Water Conservation Measure	